

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

FOREST LABORATORIES, INC., FOREST : CIVIL ACTION
LABORATORIES HOLDINGS, LTD. MERZ :
PHARMA GMBH & CO. KGAA, and :
MERZ PHARMACEUTICALS GMBH, :

Plaintiffs, :

v. :

COBALT LABORATORIES, INC., LUPIN :
PHARMACEUTICALS, INC., LUPIN LTD., :
ORCHID PHARMACEUTICALS, INC., ORCHID :
CHEMICALS AND PHARMACEUTICALS LTD. :
(D/B/A ORCHID HEALTHCARE), TEVA :
PHARMACEUTICALS USA, INC., UPSHER- :
SMITH LABORATORIES, INC., WOCKHARDT :
USA, INC., AND WOCKHARDT LIMITED, :

: NO. 08-21 (GMS/LPS)

Defendants.

FOREST LABORATORIES, INC., FOREST :
LABORATORIES HOLDINGS, LTD. MERZ :
PHARMA GMBH & CO. KGAA, and :
MERZ PHARMACEUTICALS GMBH, :

Plaintiffs, :

and

v. :

PLIVA D.D., PLIVA-HRVATSKA D.O.O., :
BARR LABORATORIES, INC., and :
BARR PHARMACEUTICALS, INC., :

: NO. 08-22 (GMS/LPS)

Defendants.

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Wilmington, Delaware
Tuesday, May 20, 2008 at 10:04 a.m.
TELEPHONE CONFERENCE

- - -

BEFORE: HONORABLE **LEONARD P. STARK**, Magistrate Judge

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(Caption and Appearances continued on Page 2)

1 FOREST LABORATORIES, INC., FOREST : CIVIL ACTION NO.
2 LABORATORIES HOLDINGS, LTD. MERZ :
3 PHARMA GMBH & CO. KGAA, and :
4 MERZ PHARMACEUTICALS GMBH, :
5 :
6 Plaintiffs, :
7 v. :
8 :
9 DR. REDDY'S LABORATORIES, INC., DR. :
10 REDDY'S LABORATORIES LIMITED, GENPHARM :
11 INC., GENPHARM, L.P., INTERPHARM :
12 HOLDINGS, INC., INTERPHARM, INC., :
13 MYLAN PHARMACEUTICALS INC., RANBAXY :
14 INC., RANBAXY LABORATORIES LIMITED, :
15 KENDLE INTERNATIONAL INC., SUN INDIA :
16 PHARMACEUTICAL INDUSTRIES LIMITED :
17 (A/K/A SUN PHARMACEUTICAL INDUSTRIES :
18 LIMITED), SYNTHON HOLDING B.V., :
19 SYNTHON B.V., SYNTHON LABORATORIES, INC., :
20 and SYNTHON PHARMACEUTICALS, INC., : NO. 08-52 (GMS/LPS)
21 :
22 Defendants. :
23 :
24 :
25 :
- - -

APPEARANCES:

14 MORRIS, NICHOLS & TUNNELL, LLP
15 BY: JACK B. BLUMENFELD, ESQ.

16 and

17 KIRKLAND & ELLIS, LLP
18 BY: GERALD J. FLATTMANN, JR., ESQ., and
19 MELANIE R. RUPERT, ESQ.
20 (New York, New York)

21 and

22 JONES DAY
23 BY: F. DOMINIC CERRITO, ESQ.
24 (New York, New York)

25 Counsel for Plaintiffs

1 APPEARANCES: (Continued)

2
3 MORRIS JAMES, LLP
4 BY: MARY MATTERER, ESQ.

5 and

6 RAKOCZY MOLINO MAZZOCHI SIWIK, LLC
7 BY: NEIL A. BENCHELL, ESQ.
8 (Chicago, Illinois)

9 Counsel for Cobalt Laboratories

10 BAYARD, P.A.
11 BY: RICHARD D. KIRK, ESQ.

12 and

13 SCHIFF HARDIN, LLP
14 BY: D. CHRISTOPHER OHLY, ESQ.
15 (Washington, District of Columbia)

16 Counsel for Lupin Pharmaceuticals USA,
17 Inc., and Lupin, Ltd.

18 RICHARDS, LAYTON & FINGER, P.A.
19 BY: ANNE SHEA GAZA, ESQ.

20 and

21 ROBINS, KAPLAN, MILLER & CIRESI, L.L.P.
22 BY: DAVID E. MARDER, ESQ.
23 (Boston, Massachusetts)

24 Counsel for Upsher-Smith Laboratories Inc.

25 RICHARDS, LAYTON & FINGER, P.A.
BY: JEFFREY L. MOYER, ESQ., and
KELLY E. FARNAN, ESQ.

and

SUGHRUE MION, PLLC
BY: MARK BOLAND, ESQ.
(Washington, District of Columbia)

Counsel for Wockhardt USA Inc.
and Wockhardt Limited

1 APPEARANCES: (Continued)

2
3 POTTER ANDERSON & CORROON, LLP
4 BY: RICHARD L. HORWITZ, ESQ.

5 and

6 LATHAM & WATKINS, LLP
7 BY: TERRENCE J. CONNOLLY, ESQ.
8 (New York, New York)

9 Counsel for Orchid Pharmaceuticals, Inc.,
10 Orchid Chemicals and Pharmaceuticals Ltd.
11 (d/b/a Orchid Healthcare)

12 STEVENS & LEE, P.C.
13 BY: THOMAS G. WHALEN, JR., ESQ.

14 and

15 KENYON & KENYON LLP
16 BY: MICHAEL M. SHEN, ESQ.
17 (Washington, District of Columbia)

18 and

19 KENYON & KENYON LLP
20 BY: STEVEN J. LEE, Ph.D., ESQ.
21 (New York, New York)

22 Counsel for Teva Pharmaceuticals USA, Inc.

23 POTTER ANDERSON & CORROON, LLP
24 BY: RICHARD L. HORWITZ, ESQ.

25 and

WILLKIE FARR & GALLAGHER LLP
BY: EUGENE L. CHANG, ESQ.
GENEVIEVE BLAKE, ESQ.
(New York, New York)

Counsel for Pliva d.d., Pliva-Hrvatska
d.o.o., Barr Laboratories, Inc., and Barr
Pharmaceuticals, Inc.

1 APPEARANCES: (Continued)

2
3 POTTER ANDERSON & CORROON, LLP
4 BY: RICHARD L. HORWITZ, ESQ.

5 and

6 BUDD LARNER
7 BY: LOUIS H. WEINSTEIN, ESQ.
8 (Short Hills, New Jersey)

9 Counsel on behalf of Dr. Reddy's
10 Laboratories, Inc., Dr. Reddy's
11 Laboratories, Ltd., Interpharm Holdings,
12 Inc., Interpharm, Inc.

13 ABRAMS & LASTER, LLP
14 BY: JOHN M. SEAMAN, ESQ.

15 and

16 WINSTON & STRAWN, LLP
17 BY: CHARLES B. KLEIN, ESQ.,
18 JAY L. LEVINE, ESQ., and
19 JOVIAL WONG, ESQ.
20 (Washington, District of Columbia)

21 Counsel for Sun India Pharmaceutical
22 Industries Ltd.

23 BALICK & BALICK, LLC
24 BY: JOSEPH S. NAYLOR, ESQ.

25 and

WILSON SONSINI GOODRICH & ROSATI
BY: ROGER J. CHIN, ESQ.
(San Francisco, California)

Counsel for Mylan Pharmaceuticals Inc.,
Genpharm ULC, and Genpharm, L.P.

Brian P. Gaffigan
Official Court Reporter

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P R O C E E D I N G S

(REPORTER'S NOTE: The following telephone conference was held in chambers, beginning at 10:04 a.m.)

THE COURT: Good morning, counsel. This is Judge Stark. Let's begin with a roll call. Who is here for the plaintiffs, please?

MR. BLUMENFELD: Good morning, Your Honor. Jack Blumenfeld from Morris Nichols for the plaintiffs. And on with me are Gerald Flattmann and Melanie Rupert from Kirkland & Ellis, Dominic Cerrito from Jones Day, and Charles Ryan who is in-house from Forest Labs.

THE COURT: And who will be speaking on your behalf today?

MR. BLUMENFELD: Mr. Flattmann.

THE COURT: All right. And for the defendant in the Cobalt case?

MS. MATTERER: This is Mary Matterer, Your Honor, from Morris James; and I have on the line Neil Benchell from the Rakoczy Molino law firm.

MR. BENCHELL: Good morning, Your Honor.

THE COURT: I'm sorry. Could you repeat the second name?

MR. BENCHELL: Yes, it's Neil Benchell.
B-E-N-C-H-E-L-L.

1 THE COURT: Okay. Thank you. And are there
2 other defendants in the Cobalt case?

3 MR. BENCHELL: That is all.

4 THE COURT: That is all? Okay.

5 MR. OHLY: Your Honor there are many other
6 defendants on the Cobalt case in the line. You just heard
7 from Cobalt. This is Chris Ohly from Schiff Hardin. I
8 represent Lupin Pharmaceuticals. Richard Kirk is our local
9 counsel and he is on the line as well.

10 THE COURT: Okay.

11 MR. KIRK: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MS. GAZA: Your Honor, it's Anne Gaza from
14 Richards Layton on behalf of Upsher-Smith Laboratories. I
15 believe with me is David Marder from Robins Kaplan.

16 MR. MARDER: That's correct.

17 THE COURT: Okay. Good morning.

18 MS. FARNAN: Good morning, Your Honor. It's
19 Jeff Moyer and Kelly Farnan from Richards Layton & Finger on
20 behalf of Wockhardt. And I also have my co-counsel, Mark
21 Boland from Sughrue Mion.

22 MR. BOLAND: Good morning.

23 THE COURT: Good morning.

24 MR. HORWITZ: Your Honor, it's Richard Horwitz
25 from Potter Anderson & Corroon for Orchid; and with me is

1 Terry Connolly from Latham & Watkins.

2 THE COURT: Good morning.

3 MR. CONNOLLY: Good morning.

4 MR. WHALEN: Good morning, Your Honor. Tom
5 Whalen from Stevens & Lee on behalf of Teva. With me on the
6 phone is Michael Shen and Steven Lee from Kenyon & Kenyon.

7 THE COURT: Okay. Good morning.

8 MR. SHEN: Good morning.

9 THE COURT: Any other defendants in the Cobalt
10 case?

11 No? I'm not hearing any.

12 Okay. How about of the defendants in the Barr
13 Laboratories case?

14 MR. CHANG: Your Honor, this is Eugene Chang and
15 Genevieve Blake, Willkie Farr & Gallagher for the Barr
16 defendants. Our legal counsel is Rich Horwitz from Potter
17 Anderson.

18 MR. HORWITZ: Good morning again, Your Honor.

19 THE COURT: Good morning again.

20 And are there additional defendants in the Barr
21 case?

22 MR. CHANG: No, Your Honor.

23 THE COURT: How about for the defendants in the
24 Dr. Reddy's Laboratories case?

25 MR. HORWITZ: Your Honor, it's Rich Horwitz

1 again. And with me for both Dr. Reddy and Interpharm are
2 Lou Weinstein from the Budd Larner firm in New Jersey.

3 THE COURT: Okay. Is that it for the defendants
4 in that third case?

5 MR. SEAMAN: Your Honor, John Seaman from Abrams
6 Laster on behalf of the Sun defendants. And with me on the
7 line I believe is Charles Klein from Winston & Strawn.

8 MR. KLEIN: We also have Jay Levine and Jovial
9 Wong.

10 THE COURT: Okay. Good morning to all of you.

11 (The attorneys respond, "Good morning.")

12 THE COURT: Is there anyone else on the call for
13 Dr. Reddy's defendants? Or defendants in the Dr. Reddy's
14 case, I should say.

15 MR. WEINSTEIN: This is Louis Weinstein. I'm
16 from Budd Larner. I'm on the phone for Dr. Reddy and
17 Interpharm.

18 THE COURT: Okay. Good morning.

19 MR. WEINSTEIN: Good morning.

20 THE COURT: Is there anybody else who hasn't had
21 a chance to say "good morning" that wants to?

22 MR. CHIN: This is Roger -- from Wilson Sonsini
23 on behalf of Mylan and Genpharm.

24 THE COURT: I'm sorry, I missed your last name.

25 MR. CHIN: Chin, C-H-I-N.

1 THE COURT: Good morning to you.

2 MR. CHIN: Good morning.

3 THE COURT: Is that everyone?

4 MR. NAYLOR: Your Honor, this is Joe Naylor from
5 Balick & Balick, also on for Genpharm and Mylan.

6 THE COURT: Okay. Good morning to you all. All
7 right. Anybody else? No? Okay.

8 All right. Well, this is the time that I set
9 for a status teleconference in these three cases, Forest
10 Labs versus Cobalt Laboratories, et al., Forest Labs versus
11 Barr Laboratories, et al, and Forest Labs versus Dr. Reddy's
12 Labs, et al. It's our case numbers 08-21, 08-22, and 08-52,
13 all of which are assigned to Judge Sleet and referred to me
14 for certain purposes.

15 We do, of course, have a court reporter here so
16 I'll ask you, given the large number of folks on the call,
17 if you would identify yourself before you speak, please.

18 Basically what I wanted to do was get just a
19 very quick sense of what these cases are about, how, if at
20 all, they are related, and the parties' suggestions as to
21 how we should proceed, particularly whether I should be
22 looking to entering a single scheduling order or multiple
23 scheduling orders or perhaps some other procedure.

24 And so I'll look first to Mr. Flattmann to give
25 me the plaintiffs' view on those issues, please.

1 MR. FLATTMANN: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. FLATTMANN: Your Honor, as you know, this is
4 an ANDA case under the Hatch-Waxman act. It involves
5 patents on Forest and Merz Alzheimer's drug which is known
6 under the trade name Namenda. There were 13 sets of generic
7 ANDA filers here. There were, as you pointed, three-related
8 filed cases that are before Your Honor and Judge Sleet. A
9 fourth related case was filed against Orgenus, one of the
10 related Orchid defendants, late last week as well.

11 THE COURT: Was that filed here in the District
12 of Delaware?

13 MR. FLATTMANN: Yes, that was filed in the
14 District late last week.

15 THE COURT: Okay.

16 MR. FLATTMANN: The cases are all closely
17 related. They all involve the same patent that was listed
18 in the Orange Book by Forest and Merz. They involve very
19 similar infringement issues, infringement defenses and
20 validity defenses as we can tell based on the notification
21 letters that we received from the various defendants. So we
22 strongly believe that the cases should ultimately be
23 consolidated and that a single scheduling order should be
24 entered.

25 All the generic filers I believe with possibly

1 one exception also appear to be first filers, so they all
2 share in any potential exclusivity that could come out of
3 this and are essentially in the same boat in terms of
4 scheduling and progress of the case. So we think
5 consolidation would definitely be in order.

6 There has been, even at this early stage, some
7 progress on settlement. We have already reached settlement
8 with the Ranbaxy defendants, and we recently settled with
9 the Synthon defendants. That second settlement is I think
10 important. There were only two jurisdictional disputes in
11 the case. One was made, as you know, by the Orchid
12 defendants, one by the Synthon defendants. Now that we have
13 settled with Synthon, the only remaining jurisdictional
14 dispute relates to the Orchid defendants. Every other
15 defendant has either consented to or did not contest
16 personal jurisdiction, so the center of gravity is clearly
17 in this District with regard to all of the defendants. And
18 we still have one remaining jurisdictional dispute.

19 As you know from the prior call concerning the
20 jurisdictional discovery with the Orchid defendants, that
21 discovery is in progress. We've received responses to
22 Orchid's -- rather, to our written discovery request, our
23 doc request, interrogatories, and RFAs from Orchid late last
24 evening. And based on our initial review, we think there
25 are some issues and some problems with those responses and

1 we're going to try to work that out with the Orchid
2 defendants. And if we're not able to resolve those
3 differences, we would request a conference with Your Honor,
4 but that does seem to be the only outlier at this point.

5 We'll be proceeding, just as a thumbnail sketch,
6 with a 30(b)(6) deposition of Orchid, which is now due under
7 Your Honor's order to be complete by June 6th. And our
8 opposition brief, assuming discovery is complete, under your
9 order would be due around June 18th.

10 So as I said, there is one outstanding
11 disagreement concerning discovery. As Your Honor knows,
12 there is also some dispute regarding whether the Orgenus
13 Orchid agent which actually filed Orchid's ANDA would be
14 providing discovery. They had objected to providing it on
15 the basis they were not a party to the Delaware action.
16 Now that that is no longer the case with the fourth filed
17 action that I alluded to, we'll be approaching the Orchid
18 defendants about that in an attempt to resolve our
19 differences there as well.

20 THE COURT: Okay. I trust you will all do your
21 best to try to resolve those differences. And if you don't,
22 you know how to reach me just as with the last time.

23 So there were two motions pending in the
24 Dr. Reddy action. My understanding is that those motions
25 will go away based on your settlement with the Synthon

1 defendants.

2 MR. FLATTMANN: That's correct, Your Honor. And
3 I believe the order of dismissal was entered yesterday with
4 regard to Synthon.

5 THE COURT: Okay.

6 MR. FLATTMANN: One other potential loose end we
7 should bring to Your Honor's attention. We did receive one
8 additional ANDA notification very recently from another
9 generic filer. The 45-day deadline for us to consider
10 whether or not to bring suit and to bring suit would expire
11 at about June 6th. So we'll know very, very soon whether or
12 not there would be one additional party in the case.

13 THE COURT: Okay.

14 MR. FLATTMANN: So those are the only two open
15 issues in the case as we see it. Otherwise, plaintiffs feel
16 as though the center of gravity is in Delaware. The cases
17 are ripe for ultimate consolidation. And we're ready to
18 proceed and move forward to a scheduling conference at the
19 Court's convenience.

20 THE COURT: Okay. Thank you for that.

21 First, with respect to the defendants in the
22 Cobalt action, have you been able to coordinate your
23 response to these general questions or do I need to go
24 through all of you?

25 MR. OHLY: Your Honor, this is Chris Ohly

1 speaking for Lupin. I'm not sure I'm the right person to
2 speak about this but one of the defendants was kind enough
3 to arrange a conference call, which we all had last week,
4 and we all are coordinated in our views on a couple of
5 issues which Your Honor has raised. I think we all agree
6 that the cases should be consolidated and that there should
7 be a single order.

8 THE COURT: Okay. And are you speaking now on
9 behalf of all the defendants in all three of the actions
10 then?

11 MR. OHLY: Except for Orchid. I think that
12 anybody who disagrees will speak up.

13 THE COURT: All right. Go ahead.

14 MR. CONNOLLY: Your Honor, it's Terrance
15 Connolly from Latham in New York on behalf of Orchid.

16 I guess, Your Honor, I found out late yesterday
17 about the filing of the case against Orgenus and the fact of
18 the matter is I have not had a chance to consult with my
19 client who is located in India with respect to that. So
20 Orchid and Orgenus are going to reserve position with
21 respect to this. I'm not sure exactly whether this newest
22 development is going to affect substantially its position.
23 I'm just not in a position because I haven't had a chance to
24 consult with the client, based on the timing of this new
25 filing, to commit to a single scheduling order. And I

1 believe, but do not know for certain, that we may have
2 issues with respect to jurisdiction over Orgenus as well. I
3 apologize for not being able to speak more definitively
4 about it but I first heard about the complaint last night
5 about 7:00 o'clock.

6 THE COURT: Okay. Other than for the Orchid
7 defendants, are there any other defendants that have a
8 concern about consolidation and a single scheduling order?

9 MR. CHANG: Your Honor, this is Eugene Chang for
10 the Barr Lab defendant. We don't have an objection to a
11 single scheduling order, but I did want to point out that
12 one of our defendants, Pliva d.d. is a foreign defendant and
13 we have objected to personal jurisdiction by the Court, but
14 I don't think it affects going forward with a single
15 scheduling order.

16 THE COURT: Okay. Is there a motion pending
17 regarding jurisdiction for that defendant?

18 MR. CHANG: Right now, there is not a motion.
19 There was an objection made as part of our answer.
20 Depending on how things play out, we plan to file such a
21 motion, though.

22 THE COURT: Okay. But you are okay with a
23 single scheduling order and with consolidation, which are the
24 issues on the table right now?

25 MR. CHANG: That's right, Your Honor.

1 THE COURT: Okay. Thank you.

2 Any other defendants have an issue with
3 consolidation and a single scheduling order?

4 Okay. Mr. Connolly, I do want to hear from you
5 after you have had a chance to confer with your client in
6 light of what I'm told I guess is a development as recently
7 as yesterday. Realistically, can you have that position to
8 all of us by the end of this week?

9 MR. CONNOLLY: I will certainly try to do that,
10 Your Honor. I believe that can be done but I have literally
11 not have had a chance to communicate. I frankly have no
12 idea where he is right now due to the time difference.

13 THE COURT: And I believe Monday is a holiday so
14 we're going to require you to advise the Court by letter but
15 copy everybody else by the end of the day next Tuesday, so a
16 week from today, with what your clients, i.e. the Orchid
17 defendants, position is with respect to consolidation of the
18 four actions and issuance of a single scheduling order. And
19 then after we have that letter, I will get something out
20 advising the parties how we're going to proceed.

21 MR. CONNOLLY: That's fine, Your Honor. Thank
22 you for the time.

23 THE COURT: Okay. Is there anything else that
24 anybody wants to raise at this point?

25 MR. OHLY: Your Honor, this is Chris Ohly for

1 Lupin again. Since jurisdiction is now established in the
2 court, there were, at least against Lupin, suits find in the
3 District of Maryland, District of Columbia. I'm wondering
4 whether we might be able to induce the plaintiffs to dismiss
5 those so it's all in one court now.

6 THE COURT: Well, Mr. Flattmann, do you want to
7 address that in this context?

8 MR. FLATTMANN: I could be wrong, Your Honor,
9 but I believe those suits had been dismissed. And certainly
10 if they have not been, now that jurisdiction has been
11 established in this court, they will be immediately if they
12 haven't been.

13 MR. OHLY: Thank you.

14 THE COURT: Thank you. All right. Is there
15 anything else? No.

16 All right. Well, we'll hear from Mr. Connolly
17 and then you will all hear from us. And we look forward to
18 speaking with you all again. Thank you.

19 (The attorneys respond, "Thank you, Your
20 Honor.")

21 (Telephone conference ends at 10:20 a.m.)

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